



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.12.1996
COM(96) 711 final

96/0317 (ACC)

Proposal for a

COUNCIL REGULATION (EC)

temporarily withdrawing access to generalized tariff preferences

for industrial goods

from the Union of Myanmar

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 12 June 1995, the European Trade Union Confederation (ETUC) and the International Confederation of Free Trade Unions (ICFTU) made a joint complaint to the Commission pursuant to Articles 9 and 10 of Council Regulation (EC) No 3281/94,¹ regarding Myanmar's use of forced labour. The Regulation states that the advantages of the Community scheme of generalized preferences may be temporarily withdrawn in whole or in part in circumstances including practice of any form of forced labour as defined in the Geneva Conventions of 25 September 1926 and 7 September 1956 and International Labour Organization Conventions Nos 29 and 105.

After thoroughly examining the complaint in consultation with the Generalized Preferences Committee, the Commission decided to open an investigation² and informed the authorities of Myanmar accordingly.

2. Assisted by qualified university experts, the Commission departments sorted and analyzed the information and statements they had received and organized hearings, which were attended by the members of the Generalized Preferences Committee. At their own request, some of those who had provided statements were heard confidentially. The Commission departments also received information from representatives of a major European investor carrying out large-scale works in Myanmar. These were provided outside the hearings, since the company in question did not consider itself to be an interested party for the purposes of the investigation.

All the material received generally pointed in the same direction, confirming that under the rule of the military government, the State Law and Order Restoration Council (SLORC), the country's authorities had made forced labour an everyday (and verifiable) reality. Forced labour had been used by the previous regime, but it had spread to the extent that it had to be centrally imposed and regulated, with directives trickling down to the local non-governmental authorities (village chiefs in the countryside). The phenomenon had since spread throughout the country, to urban and rural areas alike (entire villages were forced to move to worksites). The practice had gone beyond load-carrying for the army in areas of conflict with ethnic minorities and was used for infrastructure projects (roads, railways, runways, etc.) and building projects, not just for military use, but also for civilian use (hotel facilities mushroomed when 1996 was declared the year of tourism in Myanmar). Forced labour was imposed on everyone, man or woman, irrespective of age, state of employment or state of health. Children were used

¹ of 19 December 1994, applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries (OJ L 348, 31.12.1994).

² Notice No 96/C 15/03, OJ C 15, 20.1.1996, p.3.

too. Payment of any kind was rare, but individuals had to provide their own tools and food. The only way to escape forced labour was to pay "compensation" to the authorities, an option only open to the most well-off.

3. The authorities of Myanmar rejected the allegations contained in the complaint, citing the Buddhist tradition of acquiring personal merit by helping with projects benefiting a village, a neighbourhood, a monastery or a pagoda, for example, and the exemptions contained in ILO Convention No 29.

The cultural argument was challenged by practising Buddhists among the people who provided evidence. They contended that such merit was only earned if the work was undertaken voluntarily. This was not the case with the current authorities (the SLORC¹), which used force to recruit labour. The ILO itself challenged the Myanmar authorities' interpretation of Convention No 29, calling on them to abolish the 1907 Town Act and the 1908 Village Act, which dated from Burma's colonial days and violated the latter and the spirit of the Convention.

4. Once the hearings had been completed, the Commission sought to add to its information, and asked the Myanmar authorities to cooperate with the investigation by allowing a fact-finding team to visit. They did not act on this request, saying that it was pointless to check a situation which did not exist.

5. A report on the results of the investigation was put to the Generalized Preferences Committee on 4 December 1996.

6. Having discussed the matter, the Commission considers that the available information provides sufficient evidence that the Myanmar authorities do in fact use forced labour, and that there is justification for withdrawing the tariff preferences granted to the country.

Moreover, the fact that the practices in question are routine and widespread warrants a complete withdrawal of access. The Commission takes the view that the advantages of the generalized scheme of preferences established by Regulation (EC) No 3281/94 should be withdrawn from Myanmar for as long as the practices remain, which means that the situation might be reassessed if substantial changes occur.

The aim of this draft Regulation is to accomplish that withdrawal of access to preferences.

¹ State Law and Order Restoration Council.

[REDACTED]

Proposal for a
Council Regulation (EC) No .../96
temporarily withdrawing access to generalized tariff preferences
for industrial goods
from the Union of Myanmar

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3281/94 of 19 December 1994 applying a four-year scheme of generalized tariff preferences (1995 to 1998) in respect of certain industrial products originating in developing countries, and in particular Article 12(3) thereof,

Having regard to the proposal from the Commission,¹

Having regard to the Opinion of the European Parliament,²

Having regard to the Opinion of the Economic and Social Committee,³

Whereas pursuant to Regulation (EC) No 3281/94 the Union of Myanmar is a beneficiary of generalized tariff preferences;

Whereas Article 9 of Regulation (EC) No 3281/94 provides that the preferences in question may be temporarily withdrawn in whole or in part in circumstances including the practice of any form of forced labour as defined in the Geneva Conventions of 25 September 1926 and 7 September 1956 and International Labour Organization Conventions Nos 29 and 105;

Whereas on 7 June 1995 the International Confederation of Free Trade Unions (ICFTU) and the European Trade Union Confederation (ETUC) made a joint complaint to the

¹ OJ C.....,1996, p....

² OJ C.....,1996, p....

³ OJ C.....,1996, p....

Commission and called for Myanmar to be temporarily withdrawn from the Community scheme of generalized tariff preferences because of its use of forced labour;

Whereas the Commission examined the complaint in consultation with the Generalized Preferences Committee, whereas the evidence put forward by the complainants was judged sufficient to justify the opening of an investigation, and whereas the Commission decided on 16 January 1996¹ that an investigation should take place;

Whereas the Myanmar authorities were formally notified of the opening of the investigation; whereas they denied that the practices referred to in the complaint constituted forced labour, citing the exceptions in Article 2(2) of ILO Convention No 29, and claiming that those exceptions covered the 1907 Town Act and the 1908 Village Act, which allow the population to be made to carry out works and services; whereas that interpretation has been challenged by the ILO, whose competent bodies have called for the immediate repeal of the laws in question in order to ensure compliance with the letter and the spirit of Convention No 29;

Whereas the written and oral statements collected by the Commission during the course of the investigation conducted in consultation with the Generalized Preferences Committee corroborate the allegations contained in the complaint; whereas it has emerged that the authorities in Myanmar have routinely used forced labour, not only for military operations but also for civilian and military infrastructure building projects, backed by coercion and frequently violent reprisals;

Whereas, seeking to add to the information it had gathered during the investigation, the Commission requested the authorities of Myanmar to cooperate with that investigation by allowing a fact-finding team into the country; whereas this request was denied, and whereas pursuant to Article 11(5) of Regulation (EC) No 3281/94 the findings of the investigation could therefore be based on the information available;

Whereas the information available provides grounds to conclude that withdrawal of Myanmar's access to the scheme of generalized preferences for which it is eligible is justified;

Whereas the findings of the investigation have been reported to the Generalized Preferences Committee in accordance with Article 12(1) of Regulation (EC) No 3281/94;

¹ Notice No 96/C 15/03, OJ C 15, 20.1.1996, p.3.

Whereas the fact that the practices condemned have been routine and widespread means that a complete withdrawal of access to the arrangements is warranted;

Whereas in the light of the foregoing the application of tariff preferences to industrial goods originating in Myanmar should be temporarily withdrawn until it has been established that the practices in question have been brought to an end;

Whereas goods in shipment to the European Union should be excluded from this withdrawal of preferences, provided that they were dispatched before this Regulation entered into force:

HAS ADOPTED THIS REGULATION:

Article 1

Myanmar's access to the tariff preferences granted by Regulation (EC) No 3281/94 of 19 December 1994 is hereby withdrawn.

Article 2

The Council, on a proposal from the Commission, shall bring the application of this Regulation to an end once it has observed on the basis of a Commission report that the use of forced labour in Myanmar has ceased.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities. It shall not apply to goods proven to have been dispatched to the European Union before that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1996

For the Council,

The President

FINANCIAL STATEMENT

Title of operation

Draft proposal for a Council Regulation temporarily withdrawing access to generalized tariff preferences for industrial goods from the Union of Myanmar.

Legal basis

Article 113 of the Treaty

Objective of the operation

The aim of this draft proposal is to temporarily withdraw access to the GSP scheme for industrial goods from Myanmar.

Estimate of customs revenue

Using as a basis the GSP offer calculated using the figure for total imports of GSP-eligible industrial goods from Myanmar in 1995 and Myanmar's average take-up of the GSP scheme for industrial goods in 1994 (12%),¹ the increase in customs revenue which can be expected to result from the withdrawal of GSP access in 1997 is:

(1000 ecus)

1995 imports of GSP-eligible industrial goods from Mya	24 205
Estimated customs revenue for 1997	2 392
Average take-up of GSP in 1994	12%
Estimate of customs revenue which will actually be collected (customs duties applicable in 1997)	287 (2 392 x 12%)
Note: this revenue will drop during each year the withdrawal of access is in force in a manner reflecting the fall in duties resulting from the Uruguay Round	

¹ GSP figures for 1995 are not yet known.

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DOCUMENTS

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